

# Chesapeake Bay Preservation Area Regulations

## Summary of State Regulation Changes

### and

## Proposed Changes to Section 24.1-372

### Introduction:

In December 2001, the Chesapeake Bay Preservation Area regulations were revised by the Chesapeake Bay Local Assistance Board (CBLAB). The effective date of the new regulations was March of 2002. The State gave all 84 localities one year (i.e., until March 2003) to enact local ordinance changes; however, since CBLAB was continuing to work on policy guidance to complement the new regulations, the deadline for adoption was extended to December 31, 2003. CBLAB finalized and adopted the last element of that policy guidance on September 15, 2003. The draft Ordinance now proposed has been reviewed by CBLAB staff on several occasions and, based on that review, is believed to be consistent with the State regulations. The following paragraphs summarize the major changes being recommended, most of which are mandatory in order to conform York County's requirements with the State regulations and policies.

### Summary of Significant Changes:

- One of the main reasons for the State regulation changes was to standardize the interpretation and local administration of **the 100' to 50' RPA buffer reduction** provisions. Certain localities were reducing the buffer from 100' to 50' on new lots and existing lots even when no hardship was identified. Others, like York, were granting reductions on a more limited basis and only when necessary to achieve an adequate buildable area on a lot. This particular change in the State regulations will not affect York County because we have held to the more conservative interpretation of the law and enforced a 100' buffer.
- The State also wanted to require a **public hearing process** in order to reduce the buffer to less than 50'. Because York County already has the Board of Zoning Appeals (BOZA) public hearing process to address buffer reductions to less than 50 feet, this change also will not affect York County.
- The new regulations include a definition of **silvicultural** to close a loophole that allowed removal of all the trees/vegetation in the 100' buffer. The definition of silviculture now specifies a forestry operation and reforestation. This will not affect York County.
- The RPA is composed of two components: the feature to be protected, meaning the water body or wetlands; and, the 100-foot vegetated buffer. The State amended the **designated RPA area** to include **"a 100-foot buffer located landward of and along both sides of any water body with perennial flow"**. The new regulations also require a **site-specific determination to determine perennality**. In the past, the RPA designation was based on **tributary streams**, as identified on the USGS maps as a solid blue line. As a result of this change, the tributary stream definition has been deleted from the proposed Ordinance and replaced with the "water body with perennial flow" definition (*see definitions on page 4*). Based on the new definition/designation, the RPA and RMA in York County

will increase significantly in size because the definition includes the “lakes or ponds through which perennial streams flow”. This change may **increase the RPA and RMA to include the five reservoirs and possibly Queens Lake, parts of Edgehill, and various other areas.** The determination for perennality must be reviewed on a case-by-case basis by staff. In order to implement this requirement, the County’s ordinance must be modified to require that **ALL applicants** for building permits, site plans, subdivision plans, and land disturbing activities provide a **site-specific determination of perennial flow based on a scientifically valid system of in-field indicators, which must be field verified by Staff** (*see page 6*).

- By more closely defining allowable modifications to the buffer, the State has limited the RPA’s **to areas of no land disturbance.** Citizens cannot be allowed to place structures at the 100’ buffer line because, in the normal course of construction around the perimeter of the structure, the buffer will be disturbed/modified. The State has clarified the regulations to indicate that modifications to the buffer do not include construction access or disturbance. In the past the County policy has been to allow a fifteen foot construction zone “encroachment” into the buffer; however, this practice is now prohibited by the State regulations (*see page 15, subsection (1)*)). As a result, any land disturbance not specifically permitted in the buffer modification section will now require a BOZA variance.
- In order to implement the “no disturbance in the buffer” restriction mandated by the State, staff is proposing, for lots created/subdivided after the adoption of the new regulations, that zoning setbacks be measured from the landward edge of the RPA (*see page 15, subsection (1)*). The intent of this proposal is to ensure not only that construction activities do not disturb the RPA buffer but also that future homeowners have usable yards for lawns and accessory structures, such as sheds and pools. Requiring this to be considered at the subdivision stage, when it can be accommodated in the lot layout and design, will help avoid future violations and enforcement actions, and the need for homeowners to seek BOZA variances for the normal activities that yards accommodate. It should be noted that this proposed requirement is **optional**. All that is required by the State regulations is that there be **no disturbance in the buffer**. While this could be achieved by requiring some amount of offset to accommodate construction, staff believes that providing such a narrow space would not accommodate the normal outside activities that typically occur on residential lots without requiring a BOZA variance obtained through the public hearing process.
- The State regulations indicate that **Accessory structures** can no longer be administratively permitted through the Noncomplying Use and Development Waiver process or the Buffer Encroachment process. Currently, the County allows detached garages and pools to be administratively permitted on properties developed or platted prior to the adoption of the Chesapeake Bay regulations in 1990 (i.e., “grandfathered” houses and lots). However, as a result of the State regulation change, specific language must now be added to **limit additions to pre-Bay act principal structures** (*see page 29, subsection 7*) and **limit buffer encroachments on pre-Bay Act lots to the principal structures** (*see page 24, subsection f.1.a*))

- **RMA changes:** For the sake of clarification and consistency, areas with highly erodible soils, highly permeable soils and certain non-tidal wetlands not included in the RPA are proposed to be deleted from the RMA definition. These areas are still adequately covered by the basic EMA – Environmental Management Area overlay regulations and/or ACOE and DEQ regulations. In accordance with the County’s initial Chesapeake Bay Preservation Area ordinance approval, the draft specifies that the **RMA is 500’landward of the RPA, or the extent of the floodplain, whichever is greater** (*see page 3*).
- **Housekeeping changes:** Section 24.1-372 has been completely reorganized for consistency with other sections and for logical flow of information. For example, the definitions have been moved to the beginning and definitions buried in the text have been moved to the definition section. All references to the metric system have been eliminated.
- **Typographical errors,** consistent capitalization and grammar have been corrected.
- **Clarifications** include, but are not limited to, the following:
  - Eliminated references to pre-Bay act RPA and RMA’s,
  - Revised the EMA Overlay provisions to be compatible with sewer ordinance.
  - Eliminated shrink swell soils from environmental constraints (structural issue already covered by building regulations)
- A subsection on **civil penalties** is proposed (*see page 32*) as a deterrent and a tool for Staff to help in enforcement actions. The civil penalties section is mirrored in other environmental ordinances such as wetlands and E&SC. This is an optional, but recommended, change.
- Development review provisions are proposed to be streamlined by requiring **Water Quality Impact Assessments only for disturbance in RPA**. Currently, major WQIAs are required for all development with more than 10,000 sq. ft. of disturbance and minor WQIAs are required for all development with less than 10,000 sq. ft. of disturbance. The listed requirements for a WQIA have also been reduced from three pages to two pages (*see page 19-21*).
- No ordinance can cover all details that will come up in day-to-day administration. Therefore, an accompanying standards/guidelines document is proposed to provide assistance to applicants and staff in the day-to-day application of the ordinance requirements. The proposed concept is identical to the one in place for the County’s sewer ordinance, which has an accompanying Standards and Specifications policy. As with that system, the Board of Supervisors would approve the initial standards/guidelines and the process for amendment would be identical (*see subsection (e) on page 5*).

- The proposed regulations would allow for an administrative approval of **private roads or driveways in the RPA** provided there is no alternative, thus avoiding the need for BOZA action (see page 26, subsection (5)e.).
- To ensure consistency with the State requirements, a **Natural Resources Inventory** is proposed to be required for all development to identify unmapped perennial streams; however, it would be limited to an “inventory” only. The environmental site assessment and analysis components are proposed to be eliminated from the Ordinance. (*See page 5*)

**Changes made since October 29<sup>th</sup> Planning Commission workshop:** (in bold italic)

- Floodplain added to the RMA (*shown on page 3*)
- Eliminated verbiage defining public roads in text because a “public roads” definition was added (*shown on page 3 and 28*)
- Removed the 20% open space provision for redevelopment (*shown on page 17*)
- Added grandfathering language to allow for an administrative reduction of the buffer to 50-feet for lots created prior to the ordinance changes and effected by a perennial stream determination (*see page 24*)

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